

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

664A0159

SENATE BILL NO. 94

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise the procedure to fix a new time period for
2 execution of a death sentence if the time period established by the original warrant of
3 execution has passed.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 23A-27A-31 be amended to read as follows:

6 23A-27A-31. ~~Whenever, for any reason, or under any circumstances not otherwise~~
7 ~~specifically provided for in this chapter, a defendant sentenced to death has not been executed~~
8 ~~pursuant to the sentence at the time specified and the sentence or judgment inflicting the death~~
9 ~~penalty stands in full force, the Supreme Court, upon application of the attorney general or the~~
10 ~~state's attorney of the county where the crime was committed, shall make an order to the warden~~
11 ~~in whose custody the defendant may be, commanding him to bring the defendant before the court~~
12 ~~or commanding him to apprehend the defendant if at large and bring him before the court. Upon~~
13 ~~the defendant being brought before the court, the court shall inquire into the facts and if no legal~~
14 ~~reason exists against the execution of the judgment the court shall issue its warrant to the warden~~
15 ~~of the state penitentiary directing the execution of the judgment during a week specified in the~~
16 ~~warrant and the warden shall execute the warrant accordingly. If the time period for the~~

1 execution of any convicted person in a capital case has passed by reason of a stay of proceedings
2 incident to appellate review or by reason of the issuance of a writ of habeas corpus, certiorari,
3 or other original remedial writ of the Supreme Court, or for any other reason, a judge of the
4 circuit court shall issue a warrant of execution in accordance with § 23A-27A-15 appointing a
5 new time period for the execution of the original sentence without requiring the convicted person
6 to be brought before the court. Upon its issuance, the clerk of the court in which the sentence
7 was pronounced shall immediately send a certified copy of the warrant to all attorneys of record,
8 to the warden of the state penitentiary, and to the Governor. The warden shall execute the
9 warrant accordingly. This procedure applies to any case in which the time period for carrying out
10 the original warrant of execution has elapsed without regard to whether the original warrant was
11 issued prior or subsequent to July 1, 1997, and is retroactive.